

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS

MANUEL REZENDEZ

**Plaintiff**

V.

F/V LEGACY

PYRITE INTERNATIONAL INC

AND WHALING CITY SEAFOOD

## DISPLAY AUCTION

**Defendant**

C.A. NO. 04-10072-JLT

**ANSWER OF DEFENDANT WHALING CITY SEAFOOD  
DISPLAY AUCTION, INC.**

1. Defendant Whaling City Seafood Display Auction, Inc. ("Whaling City") is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 1 and therefore denies same.
2. Defendant Whaling City is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 2 and therefore denies same.
3. Defendant Whaling City admits the allegations of paragraph 3.

The unnumbered paragraph captioned "jurisdiction" states conclusions of law which require no answer. To the extent any answer is required, Whaling City denies the jurisdiction of this Court.

3. (*sic*) Defendant Whaling City denies the allegations of paragraph 3.

4-7 Count I paragraphs 4-7 inclusive are not addressed to Defendant Whaling City and require no answer by said defendant.

8-11 Count II, paragraphs 8-11 inclusive are not addressed to Defendant Whaling City and require no answer by said defendant.

12-13 Count III, paragraphs 12-13 inclusive are not addressed to Defendant Whaling City and require no answer by said defendant.

14. Defendant Whaling City repeats and realleges its answers to Paragraphs 1-3 inclusive as if fully set out herein and denies the allegations of paragraphs 5 through 7 inclusive.

15. Defendant Whaling City denies the allegations of paragraph 15.

16. Defendant Whaling City denies the allegations of paragraph 16.

17. Paragraph 17 states a conclusion of law which requires no answer. To the extent any answer is required, Whaling City denies paragraph 17.

**FIRST AFFIRMATIVE DEFENSE**

And answering further as a first separate and affirmative defense, defendant Whaling City states that if the plaintiff were injured as alleged, which is denied, said injuries were caused or contributed to by the plaintiff's own negligence and, therefore, plaintiff can recover nothing, or, alternatively, any recovery should be reduced by the degree of the plaintiff's own negligence.

**SECOND AFFIRMATIVE DEFENSE**

And answering further as a second separate and affirmative defense, defendant Whaling City states that if the plaintiff were injured as alleged, which is denied, said injuries were caused by an act or acts of a third person or persons over whom defendant Whaling City had no knowledge and over which defendant Whaling City had no control.

**THIRD AFFIRMATIVE DEFENSE**

And answering further as a third separate and affirmative defense, defendant Whaling City states that the plaintiff, by his actions, is estopped from claiming injuries against said defendant.

**FOURTH AFFIRMATIVE DEFENSE**

And answering further as a fourth separate and affirmative defense, defendant Whaling City states that plaintiff, by his actions, has waived any claim for injuries against said defendant.

**FIFTH AFFIRMATIVE DEFENSE**

And answering further as a fifth separate and affirmative defense, defendant Whaling City states that plaintiff's injuries were caused by the willful misconduct of plaintiff for which said defendant is not responsible.

**SIXTH AFFIRMATIVE DEFENSE**

And answering further as a sixth separate and affirmative defense, defendant Whaling City states that plaintiff's complaint fails to set forth a cause of action upon which relief can be granted.

**SEVENTH AFFIRMATIVE DEFENSE**

And answering further as a seventh separate and affirmative defense, defendant Whaling City states that plaintiff has failed to mitigate his damages.

**EIGHTH AFFIRMATIVE DEFENSE**

And answering further as an eighth separate and affirmative defense, defendant Whaling City states that any injury to the plaintiff was caused by an act of God or force majeure.

**NINTH AFFIRMATIVE DEFENSE**

And answering further as a ninth separate and affirmative defense, defendant Whaling City states that plaintiff is not entitled to a jury trial against it.

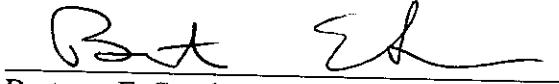
WHEREFORE, defendant Whaling City Seafood Display Auction Inc. prays that plaintiff's count against it be dismissed with costs and reasonable attorneys fees.

WHALING CITY SEAFOOD DISPLAY  
AUCTION, INC.  
By its attorney

  
Bertram E. Snyder, BBO#471320  
LOONEY & GROSSMAN, LLP  
101 Arch Street  
Boston, Massachusetts 02110  
(617) 951-2800

**Certificate of Service**

I hereby certify that on this 5<sup>th</sup> day of March 2004, I served the foregoing Motion to Remove Default and Answer by mailing a copy thereof, postage prepaid, to David B. Kaplan, Esq., Kaplan Bond Group, Boston Fish Pier, West Building, Suite 304, Boston, MA 02210 and Regan & Kiley, attorneys for defendants FV LEGACY and Pyrite International, Inc., 85 Devonshire Street, Boston, MA 02109.

  
Bertram E. Snyder